



POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Detective Nicola Sutherland-Marrow :

ORDER

Tax Registry No. 917181 :

OF

Internal Affairs Bureau :

DISMISSAL
-----X

Detective Nicola Sutherland-Marrow, Tax Registry No. 917181, [REDACTED]

[REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2020-21869 as set forth on form P.D. 468-121, dated March 5, 2020, and after a review of the entire record, is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Detective Nicola Sutherland-Marrow from the Police Service of the City of New York.


DERMOT F. SHEA
POLICE COMMISSIONER

EFFECTIVE: 03/24/2020

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POLICE DEPARTMENT

March 16, 2020

-----X
In the Matter of the Charges and Specifications :

Case No.

- against - :

2020-21869

Detective Nicola Sutherland-Marrow :

Tax Registry No. 917181 :

Internal Affairs Bureau :

-----X
At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Tried *in absentia*

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. On or about March 5, 2020, Detective Nicola Sutherland-Marrow, while assigned to the Internal Affairs Bureau, refused to answer questions posed to her during an official Department interview conducted pursuant to Patrol Guide 206-13, regarding a prior pending investigation.
P.G. 206-13
P.G. 203-03
INTERROGATION OF MEMBERS OF
THE SERVICE
COMPLIANCE WITH ORDERS
2. On or about March 5, 2020, Detective Nicola Sutherland-Marrow, while assigned to the Internal Affairs Bureau, failed to comply with an order and direction given by Deputy Inspector Bienvenido Martinez to answer questions during an official Department interview conducted pursuant to Patrol Guide 206-13.
P.G. 203-03
P.G. 203-10, Page 1, Paragraph 5
COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-referenced matter appeared before me on March 12, 2020. Respondent did not appear for the trial, and an inquest hearing was held in her absence. Respondent's attorney, Marissa Gillespie, did appear immediately prior to the proceedings, but chose not to participate in the hearing itself. The Department called Sergeant Penny Wang of IAB as a witness. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent guilty of the charges, and recommend that she be dismissed from the Department.

ANALYSIS

Respondent faces charges stemming from her refusal to answer questions, and failing to comply with an order, at her official Department interview on March 5, 2020.

A. Procedural History

In February of 2020, Respondent allegedly [REDACTED]. On March 3, 2020, Respondent, who has over 23 years of service with the Department, submitted an application for service retirement; her effective date of retirement is scheduled for April 2, 2020. (Tr. 8)

On March 5, 2020, Respondent appeared before the court to conference this matter. She was represented by her attorney, Ms. Gillespie. Respondent and counsel were present when the court adjourned the case for trial to March 12, 2020; Respondent was informed by the court that if she failed to appear, the trial could proceed in her absence. (Tr. 3-4)

On March 12, 2020, Respondent did not appear for trial. Ms. Gillespie advised the court that she discussed the matter with Respondent, and they decided not to participate in the proceeding. (Tr. 4)

Since Respondent was directly informed by the court, in the presence of her counsel, that the trial was to commence on March 12, 2020, I find that she had ample notice of the charges and the date of this proceeding. Based on the foregoing, the court proceeded in Respondent's absence, and conducted an inquest hearing on March 12. (38 R.C.N.Y. 15-03 (b) (2), 15-04 (d))

B. Analysis

Sergeant Penny Wang of IAB testified that she was assigned to conduct an official Department interview of Respondent on March 5, 2020. The interview was scheduled in furtherance of the Department's investigation into allegations that Respondent [REDACTED]. On that date, Respondent, accompanied by her attorney Ms. Gillespie, appeared at Headquarters. Also present for the interview was Deputy Inspector Bienvenido Martinez. (Tr. 15-16, 20, 25)

Sergeant Wang testified that she followed the procedures set forth in Patrol Guide section 206-13 for conducting the interview. She read to Respondent the warnings on page 3 of that section:

I wish to advise you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed and narrowly related to the performance of your duties. You are entitled to all the rights and privileges guaranteed by the laws of the State of New York, the Constitution of this State, and the Constitution of the United States, including the right not to be compelled to incriminate yourself and the right to have legal counsel present at each and every stage of this investigation.

I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to Departmental charges, which could result in your dismissal from the Police Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent Departmental charges.

Sergeant Wang proceeded to ask Respondent if she understood the warnings, and Respondent answered, "Yes." Sergeant Wang also warned Respondent that, pursuant to Patrol Guide Section 203-08, intentionally making a false statement is prohibited. (Tr. 16, 21-23)

According to Sergeant Wang, when she asked Respondent if she would answer questions regarding allegations that [REDACTED], Respondent answered that she was not willing to answer questions. Deputy Inspector Martinez then twice ordered Respondent to answer questions under the provisions of Patrol Guide Sections 206-13 and 203-08. Respondent acknowledged that she understood the orders, but refused to answer questions regarding her alleged misconduct. Sergeant Wang again asked Respondent if she would be willing to answer questions, and Respondent once more declined. At the conclusion of the interview, Respondent was suspended for refusing to answer questions, and failing to comply with an order to do so. (Tr. 16-19, 23-24)

Specification 1 charges Respondent with refusing to answer questions posed to her during her official Department interview, while Specification 2 charges Respondent with failure to follow an order given by a Deputy Inspector to answer the questions. Patrol Guide Section 206-13 (12) states that a member of the service is required to "answer questions specifically directed and narrowly related to official duties." Patrol Guide Section 203-03 (2) states that a member of the service is required to "obey lawful orders and instructions of supervising officers."

Here, the credible evidence has established that Respondent refused to answer questions, and refused to comply with an order to do so, at her official Department interview on March 5, 2020. I credit Sergeant Wang's testimony that she read the appropriate warnings to Respondent pursuant to Patrol Guide Section 206-13; Respondent acknowledged that she understood the warnings, yet refused to answer. I also credit Sergeant Wang's testimony that Respondent twice received an order from Deputy Inspector Martinez to answer the questions, and Respondent still failed to do so. Accordingly, I find Respondent guilty of Specifications 1 and 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 18, 1996. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of refusing to answer questions at her official Department interview, and failing to comply with a lawful order from an executive to answer the questions. The Department was investigating serious allegations that Respondent [REDACTED] [REDACTED] After being specifically informed that her refusal to answer questions could

subject her to dismissal from the Department, Respondent still declined to respond to the questions, even after being ordered to do so by a Deputy Inspector.

This tribunal has consistently held that failure to comply with an order to cooperate at an official Department interview is grounds for termination. *See Disciplinary Case No. 2018-19382* (Aug. 29, 2018) (Seventeen-year police officer dismissed after being found guilty of failing to comply with an order to answer questions during an official Department interview); *Disciplinary Case No. 2017-18355* (Jan. 12, 2018) (Twenty-one-year police officer with prior discipline dismissed from the Department after being found guilty of failing to comply with an order to answer questions during an official Department interview.); *see also Disciplinary Case No. 2016-15216* (Feb. 10, 2016) (Twenty-four-year lieutenant with prior discipline dismissed from the Department for failing to comply with orders on two separate dates to appear for official Department interviews).

Here, Respondent's misconduct was similarly egregious, and separation from the Department is warranted. Respondent's conscious decision to refuse a lawful order to answer questions undermined the legitimate investigation into her conduct, rendering her continued employment with the Department untenable. Taking into account the totality of the facts and circumstances in this matter, and consistent with Department precedent, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAR 24 2020

DERMOT SHEA
POLICE COMMISSIONER



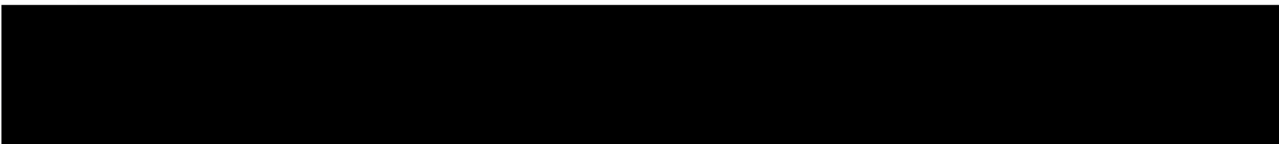
POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE NICOLA SUTHERLAND-MARROW
TAX REGISTRY NO. 917181
DISCIPLINARY CASE NO. 2020-21869

Respondent was appointed to the Department as a Police Officer on July 18, 1996. On her three most recent annual performance evaluations, she received a 3.5 overall rating of "Highly Competent/Competent" for 2017, and twice received 4.0 overall ratings of "Highly Competent" for 2018 and 2019.



For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials